

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NICHOLAS DUTTLE, SHARON
DUTTLE, and SHAUN DUTTLE,

Plaintiffs,

v.

Civ. No. 10-839 MCA/GBW

CURTIS CHILDRESS, ROBIN GOJKOVICH,
CARLOS MADRID, HENRY RODRIGUEZ,
JOE HERRERA, JOE PADILLA, JOHN
MARTINEZ, MARY LOU WARD, ROBBIE ACOSTA,
SUSIE MALDONADO, TRAVIS WELLS, VALERIE
HEREDIA, MICHELLE BOUDRIE, CITY OF LAS
CRUCES, DONA ANA COUNTY, and DONA ANA
COUNTY SHERIFF'S DEPARTMENT,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION

THIS MATTER is before the Court on Defendants' Motion to Compel Production of Documents and for Extension of Dispositive Motion and Other Pretrial Deadlines.

Doc. 88. As a result of considerable delays caused by Plaintiffs and their admission to concealing documents, Defendants seek to reset various pretrial deadlines and to compel disclosure of documents referenced in one Plaintiff's deposition. *Id.* Despite informing Defendants that they opposed the motion, Plaintiffs have failed to timely file any response. Thus, the Motion is deemed fully briefed and will be granted.

Pursuant to this Court's rules, "[a] response must be served and filed within fourteen (14) calendar days after service of [a] motion." D.N.M.LR-Civ 7.4(a). The

fourteen day timeframe is calculated with reference to Federal Rules of Civil Procedure 6(a) and (d). *Id.* Pursuant to Rule 6(d), time for response to a motion is extended by three days where the motion was filed electronically. *See* Fed. R. Civ. P. 6(d) (citing, *inter alia*, Fed. R. Civ. P. 5(b)(2)(E)). Further, under Rule 6(a), where a deadline falls on a Saturday, Sunday, or Federal holiday, the deadline is extended to the next subsequent day that is not a Saturday, Sunday, or Federal holiday. Fed. R. Civ. P. 6(a)(1)(C). “The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.” D.N.M.LR-Civ 7.1(b).

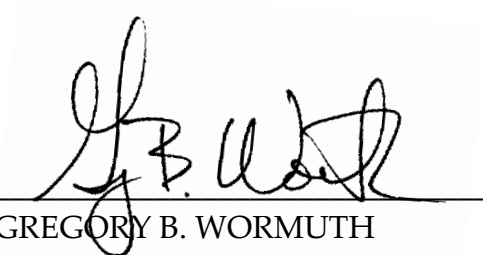
Defendants filed the instant motion on May 16, 2012. As a result, the seventeen days within which to respond – encompassing the fourteen-day local rule and the three-day electronic extension times – fell on June 2, 2012. Because June 2 was a Saturday, however, the time for filing a response was further extended to Monday, June 4. That day has passed with no response from Plaintiffs.¹ As such, they have consented to granting the motion.²

¹ Plaintiffs and their counsel have already been sanctioned for failure to follow the rules of this Court. *Docs. 62, 95.* Despite the Court explicitly admonishing Plaintiffs about the sanctions that may follow for any further breaches of rules, the instant motion represents the *third* time a motion is being decided against Plaintiffs based purely upon failures under the rules of court. *See doc. 93* (failure to follow withdrawal rules), *94* (failure to indicate good-faith attempt to seek concurrence). However, as Defendants have not sought additional sanctions, the Court will not issue them *sua sponte* at this time.

² Because the motion also seeks to alter deadlines set in this Court’s Scheduling Order, (*doc. 28*), the Motion must meet a “good cause” standard and the Court must consent. *See* Fed. R. Civ. P. 16(b)(4) (“A schedule may be modified only for good cause and with the judge’s consent.”). The Court finds that Defendants’ recitation of Plaintiffs’ dilatory conduct establishes “good cause” for the relief Defendants seek. *See generally doc. 88.* Thus, the Motion will be granted.

Wherefore, **IT IS HEREBY ORDERED** that Defendants' Motion to Compel Production of Documents and for Extension of Dispositive Motion and Other Pretrial Deadlines, (*doc. 88*), is **GRANTED**. No later than June 12, 2012, Plaintiffs shall provide any and all documents referenced in Sharon Duttles' deposition on March 1, 2012 to Defendants.

IT IS FURTHER ORDERED that counsel for all parties shall appear before the Court for a telephonic status conference on June 13, 2012 at 1:30 p.m. wherein the resetting of pretrial deadlines will be discussed. *See doc. 28*. Parties shall call the Court's "Meet Me" line at (505) 348-2351 to be connected to the proceedings.



GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE